

1501 Equal Accommodations Regulations

Introduction

These Rules and Regulations have been prepared pursuant to the powers granted the Human Relations Commission and are intended to meet the applicable requirements of the Administrative Procedures Act, under 29 **Del.C.** § 10101, et seq.

These Regulations shall govern individual cases over which the Human Relations Commission and the Division of Human Relations have jurisdiction pursuant to 6 **Del.C.** § 4500, et seq., as it may be amended from time to time.

These Regulations refer to “hearings” for case decisions only and are, therefore, to be distinguished from any other public hearings which may be held by the Commission to address general issues of public concern and which are not controlled by these Regulations.

These Rules and Regulations are specific to the processing of complaints of discrimination under the Delaware Equal Accommodations Law. The Commission believes these Rules and Regulations are necessary to ensure the appropriate administration of the Equal Accommodations Law.

These Regulations shall apply to Equal Accommodation causes of action arising under the Delaware Equal Accommodations Law. Delaware Fair Housing Act actions under 6 **Del.C.** § 4600, et seq., are not affected by these Regulations.

1.0 Definitions

1.1 The following terms used in these Regulations shall have the same definitions as those terms contained in the Equal Accommodations Law, 6 **Del.C.** Ch. 45, §4502:

- Chairperson
- Commission
- Complainant
- Conciliation
- Conciliation Agreement
- Disability
- Discriminatory Public Accommodation Practice
- Division
- Marital Status
- Panel
- Panel Chair
- Place of Public Accommodation
- Respondent
- Special Administration Fund

1.2 As used in these Regulations, the following terms are defined:

“**Commissioner**” means a person duly serving as a member of the Commission.

“Division Director” means the administrator and head of the Division of Human Relations, or other person duly authorized to act as such.

“Minor” means a person under the age of eighteen years who has not been court emancipated.

“Office” means any one of the places of business of the Division of Human Relations.

“Party or Parties” means the Complainant(s) or Respondent(s).

“Staff” means a person or persons employed by the Division of Human Relations of the State of Delaware.

2.0 Commencement of Proceedings

2.1 Any person claiming to be aggrieved by discriminatory public accommodations practices within the jurisdiction of the Commission may file a written complaint with the Division. Minors shall be represented by a parent, guardian or other responsible adult for the purpose of bringing an action.

2.2 The Commission and the Division may each initiate an investigation into compliance with the Equal Accommodations Law, whether or not a complaint is filed. If an investigation is initiated by the Commission, such investigation may be initiated by written statement showing justification signed by the Chairperson or by such person as may be authorized by the Commission. In accordance with applicable provisions of the law, and to the extent practicable, the procedures in these Regulations shall apply to Commission-initiated and Division-initiated investigations.

2.3 A complaint shall be filed at any one of the places of business of the Division of Human Relations.

2.4 Complaints made with the Commission through the Division of Human Relations shall be in writing and deemed to be "filed" when received at the Division in substantially completed form.

2.5 All complaints must be filed on a complaint form provided by the Division.

2.6 All complaint forms shall include the following information:

2.6.1 The complainant's name and address;

2.6.2 The name and location of the place of public accommodation at which the discriminatory public accommodation practice(s) occurred, and the date, time and an explanation thereof.

2.6.3 If known, the name and address of each Respondent and, if different, the name of the owner, lessee, proprietor, manager, superintendent, director, supervisor, agent or employee of the place of public accommodations;

2.6.4 The date of the first occurrence of the alleged discriminatory practice and whether the practice is of a continuing nature; and

2.6.5 The signature of the complainant or his/her attorney.

2.7 Complainants and Respondents must keep the Division of Human Relations informed of their current addresses and telephone numbers during the pendency of any proceedings.

2.8 Service of the complaint shall be made by the Division of Human Relations in accordance with 11.2 of these Regulations.

3.0 Response to Complaint

3.1 The Respondent shall file a written response to the complaint, on a form provided by the Division of Human Relations, or a notice of intention to pursue no-fault settlement, within twenty (20) days of receipt of service of the complaint.

3.2 Either of such documents shall be signed by the Respondent or Respondent's attorney and shall be filed at the Office of the Division where the complaint was filed and shall provide proof that a copy has been served on the Complainant.

4.0 Amending a Complaint

4.1 The Complaint may be amended at any time.

4.2 The Respondent shall serve an answer to any amended complaint within ten (10) days of receipt of service of the amended complaint or within the time remaining to respond to the initial complaint, whichever is greater.

4.3 Amended complaints and the answers shall be signed by the Party or the Party's attorney.

5.0 Case Closing Prior to Hearing

5.1 Voluntary Termination and Dismissal

5.1.1 A case may be dismissed by the Complainant without order of the Commission by filing a notice of dismissal at any time before service of a response to the complaint or by filing a stipulation of dismissal signed by all Parties who have appeared in the case. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a Complainant who has once dismissed a case before the Commission based on or including the same claim. A Complainant who dismisses a case pursuant to this paragraph without prejudice may refile a complaint within ninety (90) days after the occurrence of the alleged discriminatory public accommodation practice.

5.1.2 After the Respondent has filed a response to the complaint, a case shall not be dismissed at the Complainant's request except upon order of the Commission or upon order by a single Commissioner authorized by the Commission prior to the appointment of a panel and upon such terms and conditions as the Commission deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

5.1.3 A case may be dismissed, upon notice of the Commission or of the Division, for lack of activity. Application shall be made in writing by the Division staff to a Panel or if no Panel has been appointed, then to the Division Director or Commission Chairperson, stating the reason for the proposed dismissal.

5.1.4 A case may be dismissed, upon notice of the Commission or of the Division, for failure of Complainant to cooperate upon application of the Division staff to the Panel or if no Panel has been appointed, then to the Division Director or Commission Chairperson. Failure to cooperate includes, but is not limited to, failure to keep the Division informed of Complainant's current address.

5.1.5 A case may be dismissed upon written application to the Commission by the Respondent or the Division Director when

5.1.5.1 the Commission does not have jurisdiction to determine the case; or

5.1.5.2 the facts alleged do not state a violation of the law.

5.1.6 If the Division determines that the Commission does not have jurisdiction over the case or that the complaint does not allege facts that state a violation of the law, the Division Director shall apply in writing to the Panel Chair or designee (or, if a Panel has not been appointed, to the Chairperson or other designee), for dismissal of the complaint under Rule 5.1.5.

5.1.7 An application for dismissal by the Respondent shall show proof of service of the application upon the Complainant and the Division. Complainant shall have 10 days after being served to respond to the Respondent and Commission. An application for dismissal by the Division shall show proof of service on all parties and all parties shall have 10 days after being served to respond to the Commission with proof of service to the Division.

5.1.8 The Panel Chair or designee (or, if no Panel has been appointed, the Commission Chairperson or other designee) shall consider the application for dismissal. In the absence of compelling or unusual circumstances, such consideration shall be without an evidentiary hearing or oral argument. The Panel Chair or designee (or, the Commission Chairperson or designee) will consider only the facts alleged in the pleadings or any related submissions and any reasonable inferences from those facts. The facts alleged by the claimant, unless conclusory, will be considered as true for the purpose of the dismissal proceeding.

5.1.9 All notices of case dismissals shall be served on all parties and shall include a statement of the right to appeal, to have the case reopened for good cause shown to the Panel, or if no Panel has been appointed, then to the Division Director or Chairperson.

5.1.10 All orders resulting from an application for dismissal are subject to Superior Court review pursuant to 6 **Del.C.** § 4511.

6.0 Investigation

6.1 Investigation of the complaint shall be conducted by Staff and shall commence promptly after the filing of the complaint. Investigation may include, without limitation: interviews, questionnaires, fact finding conferences, searching of records, testing, identification of any witnesses, development of statistics, other studies of practices and patterns, or other work to gather relevant evidence.

6.2 Evidence sought by a subpoena issued in connection with an investigation must be relevant to the investigation, be adequately specified, and only cover a reasonable period of time.

7.0 Conciliation

7.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement offer. The Complainant(s) shall be notified of the opportunity to conciliate when a complaint is filed, and the Respondent(s) shall be so notified when a complaint is served. Staff shall schedule an informal conciliation conference to be held with the Complainant(s), the Respondent(s) and, if they so choose, attorneys representing them, within thirty (30) days after the receipt of the response to the complaint, unless it is impractical to do so.

7.2 Conciliation shall be initiated upon request of any Party, or upon the request or recommendation of Staff or a member of the Commission.

7.3 Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the Parties. Forms of relief may include, without limitation:

- 7.3.1 binding arbitration to resolve the dispute;
 - 7.3.2 payment of damages; other monetary relief;
 - 7.3.3 payment to the Special Administration Fund;
 - 7.3.4 monitoring of the future activities of Respondent(s);
 - 7.3.5 measures taken to ensure future compliance with the Equal Accommodations Law; and/or
 - 7.3.6 such other relief as is agreed upon by the Parties.
- 7.4 Executed copies of such agreements shall be given to all Parties.

8.0 Hearings

- 8.1 The purpose of a hearing is:
- 8.1.1 to hear argument;
 - 8.1.2 where appropriate, to receive evidence and determine facts; and
 - 8.1.3 in all events to render an adjudication in accordance with applicable law.

8.2 If a complaint cannot be resolved through conciliation, as provided in Section 4508(c) of the Delaware Equal Accommodations Law, the Commission shall appoint a Panel to hold a public hearing within 60 days after the expiration of the 120-day period for investigation and conciliation. The deadlines provided in Section 4508(c) and Section 4508(e) may be extended by the Chairperson or if a Panel has been appointed by the Panel Chair at the request of any Party or Staff upon a showing of good cause.

8.3 The date, time, place and a brief description of the subject matter of the hearing as well as other information required by the Administrative Procedures Act shall be included in the Notice of Hearing sent to all Parties, the Panel and the Attorney General's representative.

8.4 The Hearing shall be held within the county in which the discriminatory practice is alleged to have occurred.

8.5 As provided in 6 Del.C. §4510, a subpoena shall be issued upon written request by any Party, Staff or a Panel Member. Such requests shall be submitted no later than twenty (20) days in advance of the Hearing. Witnesses and documents must be clearly described in writing. The consequence of failure to request a subpoena in a timely fashion shall be in the discretion of the Panel.

8.5.1 Any individual or entity served with a subpoena may apply to the Panel to quash or modify the subpoena on any legal basis including but not limited to the following: that the subpoena does not adequately describe the evidence requested; is not relevant to the complaint; covers an unreasonable period of time; requires disclosure of a trade secret, confidential research, development or commercial information, or privileged or other protected matter and no exception or waiver applies; subjects a person to undue burden or hardship; or requires disclosure of the opinion of an expert not retained for a hearing or information not describing specific events or occurrences in dispute.

8.5.2 Where a person fails or neglects to attend and testify or to produce records or other evidence in obedience to a subpoena or other lawful order, the Commission may petition the Superior Court for an order requiring the person to appear to produce evidence or give testimony. Failure to obey such order may be punishable by the Court as contempt.

8.6 Subpoenas may be served by any sheriff, deputy sheriff, constable or any member of the Commission or employee of the Division of Human Relations. The return of service of each subpoena shall be promptly filed at the appropriate Division office.

8.7 No fewer than three (3) Commissioners shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel member the Chairperson or his or her designee shall be empowered to make a substitution without notice to the parties, provided the hearing has not yet begun.

8.8 A written list of witnesses a Party intends to call during a panel hearing must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) days prior to a hearing.

8.8.1 The Panel, in its discretion, may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.

8.9 All motions shall be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) days prior to the hearing. Motions filed beyond this time limit may not be considered at the discretion of the Panel. Opposing Parties may file a response to the motion or may present opposition at the hearing. Replies to responses to motions are not permitted.

8.10 Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) days prior to the hearing. The Panel shall consider such exhibits without formal proof unless the Parties and the Commission have been notified at least five (5) days prior to the hearing that an adverse Party intends to raise an issue concerning the authenticity of the exhibit.

8.10.1 The Panel may refuse to receive into evidence as an exhibit, documents or photographs, which have not been delivered to the Commission and to an adverse Party as provided herein. After commencement of the hearing, the Panel, in its discretion, may view or inspect exhibits or the location involved in a case.

8.10.2 Exhibits submitted at Panel hearings are to be kept by the Commission during the passage of time for judicial review under Section 4511 of the Delaware Equal Accommodations Law or until all relevant proceedings have been concluded, whichever is later. The exhibits shall then be returned to the Party which submitted such or, at the request of that Party, destroyed.

8.11 The hearing shall be conducted by the Panel Chair. Individuals and business organizations may be represented by counsel. A business organization may also be represented by a non-attorney employee. Every hearing shall be recorded by electronic instrument or court reporter.

8.12 Certain hearings may address purely legal issues, in which event all Parties or their counsel may, at the discretion of the Panel, have an opportunity to present oral argument.

8.13 In evidentiary hearings, all Parties or their counsel shall be given the opportunity to make a brief opening statement prior to the introduction of any evidence in the case. The Panel Chair shall explain to the Parties that they may make a general statement of what they intend to prove through testimony and exhibits but that they are not permitted at this time to testify or to present argument to the Panel. The Panel Chair shall interrupt a Party who attempts to testify or present argument during an opening statement and inform the Party that such testimony or argument can be provided at the appropriate time during the hearing. The

Panel Chair will then offer the opposing Party the opportunity to present an opening statement if the opposing Party has not already done so or shall move to the next stage of the proceedings.

8.14 Testimony shall be under oath or affirmation administered by the court reporter. If a court reporter is not present, witnesses shall be sworn in by the Panel Chair.

8.15 Staff shall be required to attend the Hearing in order to assist in the proceedings, or, where appropriate, to be a witness.

8.16 The Panel Chair shall have full authority to control the hearing proceedings, including, but not limited to the authority to call and examine witnesses; to admit or exclude evidence; and to rule upon all motions and objections subject to the following:

8.16.1 Formal rules of evidence will not be strictly followed.

8.16.2 Direct and cross examination shall be preserved and may be conducted by the Parties or their attorney(s), or Panel Members or the Deputy Attorney General representing the panel may question any witness.

8.16.3 Testimony from any person may be allowed at the discretion of the Panel.

8.16.4 Witnesses may be sequestered at the discretion of the Panel Chair upon the request of any Party(ies).

8.16.5 Evidence on the behalf of the Complainant(s) should ordinarily be introduced first, to be followed by the Respondent(s)' evidence, then allowing rebuttal, if any.

8.16.6 The Panel may continue a hearing from day to day or adjourn it to a later date or to a different place by so announcing at the Hearing or by appropriate notice to all Parties.

8.16.7 Following the presentation of the evidence, an opportunity shall be given to each Party to make a closing statement.

8.16.8 The Panel may recall the Parties for further testimony if necessary to reach a decision.

8.16.9 Deliberations of the Panel typically commence immediately following the hearing, and are not open to the public.

8.17 A written transcript shall be prepared, if and as required, on the written request of any Party, provided that such Party pays for the cost of preparing the transcript. Staff shall coordinate this process under State contract. A deposit may be required. Such recordings and transcripts shall be preserved with the official file record of a case.

9.0 Decision and Orders

9.1 The case decision may be rendered immediately following the Hearing or the Panel may reserve its decision to a later date. Case decisions shall be by a majority vote of the Panel.

9.2 A copy of the Panel's Final Order shall be mailed by certified mail, return receipt requested, delivered by hand or delivered by regular first class mail to the last address which each Party has provided to the Division of Human Relations for the Party or, if the Party is represented, the Party's attorney.

9.3 Within five (5) days after receipt of the Panel's decision or order any Party may apply to the Panel for reconsideration by briefly and distinctly stating the grounds. The application shall show that it was served on the opposing party. Within five (5) days after service of such application, the opposing party may serve and file a brief answer to each ground asserted.

The Panel shall promptly convene to consider such application for reconsideration. The filing of such application shall extend the time for judicial review under 6 **Del.C.** §4511.

10.0 Recovery of Attorney's Fees and Expenses

10.1 Any Party seeking to recover attorneys' fees and expenses pursuant to Section 4508 (g) or (h) shall, at least five (5) days prior to the hearing, file at the at the Division office where the complaint was filed, and serve upon the other Parties, a motion and affidavit detailing the time spent and fees incurred and a reasonable estimate of the fees likely to be incurred after such date through the end of the ~~H~~ hearing. Any objections to the motion shall be presented at the ~~H~~ hearing. Determination that a Party is entitled to an award of attorneys' fees or costs shall be made solely at the Panel's discretion. Failure to timely file such motion and affidavit as set forth in these Regulations shall constitute a waiver of a Party's right to an award of attorneys' fees or costs.

11.0 Miscellaneous Provisions

11.1 Time

11.1.1 In computing any period of time prescribed or allowed, by these Regulations or by order of court or by statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, legal holiday, in which event the period shall run until the end of the next business day. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the Supreme Court of the State of Delaware.

11.1.2 When, by these Regulations or by a notice given thereunder or by order of court, an act is required, or allowed to be done, at or within a specified time, the Panel Chair or the Chairperson of the Commission, for good cause shown, may, at any time, in its discretion:

11.1.2.1 with or without motion or notice, order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order; or

11.1.2.2 upon a motion made after the expiration of a specified period, permit the act to be done where the failure to act was the result of excusable neglect.

11.1.3 Whenever a Party has the right to do, or is required to do, some act or take some proceeding within a prescribed period after being served, and service is by mail, three (3) days shall be added to the prescribed period.

11.2 Service. Unless otherwise specifically required by the Equal Accommodations Law or these Regulations, service of complaints, answers, other pleadings, motions, requests or notices shall be made according to this Rule.

11.2.1 For the initial complaint and any pleading which brings in a new Party, service shall be made by certified mail, return receipt requested with the return receipt card signed by: the person to be served; a person living with or working in the office of the person to be served; or an agent authorized by appointment or by law to receive service of process. Alternatively, where appropriate, service may be made in accordance with Superior Court Civil Rule 4(f), or Superior Court Civil Rule 4(h) for service under Title 10, Section 3104.

11.2.2 For documents other than the initial complaint and any document which brings in a new Party, once jurisdiction over a party has been established, service shall be by certified mail, return receipt requested; by hand delivery or first class mail, as evidenced by a certificate of service; by an express mail service, with a receipt showing that the notice was delivered to the express mail service; or by telecopier or facsimile machine with confirmation of the transmission from the sender's machine.

11.2.2.1 Where a Party is represented by an attorney, service shall be made on the attorney only.

11.3 The Administrative Procedures Act (29 **Del.C.** Ch. 101), as it may be amended from time to time, shall provide the method by which these Regulations may be amended.

11.4 These Regulations shall be reviewed periodically by the Commission, or a designee and the Director of the Division of Human Relations. Any recommendations for revision shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.

11.5 These Regulations shall be liberally construed in such a manner as to accomplish the purpose of the Equal Accommodations Law.

11.6 Copies of these Regulations shall be available during regular office hours at each of the offices of the Division of Human Relations or, upon request, by mail. A fee established by the Division of Human Relations may be charged for the provision of copies.